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Notification of the Securities and Exchange Commission

No. KorNor. 23/2544

Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents

By virtue of Section 14, the second paragraph of Section 100 and Section 115 of the Securities and Exchange Act B.E. 2535 (1992), the Securities and Exchange Commission hereby issues the following regulations:

Clause 1. In this Notification,
“investment advisory company” means a securities company licensed to undertake securities business in the category of investment advisory service;

“person with power of management” means a person responsible for a line of work relating to investment advisory service, ranging from the level of the department director to the manager;

“department director” means any person who is responsible for the internal operation of a department in the company;

“manager” means a person appointed by the board of directors of an investment advisory company to assume the highest responsibility in the management of the investment advisory company, regardless of the title;

“investor contact”¹ means any person who has duties to contact, solicit, advice or prepare investment plans for investors or customers of a securities company and are divided into two categories: Category A investor contact referring to investor contact that is authorized to analyze securities investments, and Category B investor contact referring to investor contact that is unauthorized to analyze securities investments;

“investment advisory agent” means a natural person other than director or officer of the investment advisory company, appointed by the investment advisory company to be an advisory agent;

¹ As amended by the Notification of the Securities and Exchange Commission No. KorKhor. 20/2548 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 4), dated 28 February 2005.

(Translation)

-2-

“mutual fund rating”² means giving advice or opinion or suitability of investment in a mutual fund in comparative value and may be giving a sign or other symbol for supplementing such advice or opinion;

“collateral” means a collateral for compensation of damage to a customer arising from incorrect or incomplete performance of duties of the investment advisory company, i.e. :

- (a) insurance policy of the insurance company;
- (b) letter of guarantee of a commercial bank, finance company, or financial institution established under a specific law;
- (c) other collateral prescribed by the Office.

“liquid assets” means the following assets without binding obligation:

- (a) cash and bank deposit;
- (b) a certificate of cash deposit or promissory note issued by a commercial bank, bank established under specific law, the Industrial Finance Corporation of Thailand, a finance company or credit foncier company;
- (c) a treasury bill, Government bond, state enterprise bond, Bank of Thailand bond, Financial Institutions Development Fund bond and bond or debt instrument issued by the Ministry of Finance;
- (d) other liquid assets prescribed by the Office.

“customer” means a person agreeing to receive an advice from an investment advisory company;

“giving advice” means giving advice, whether directly or indirectly, concerning the value of securities or suitability of investing in those securities, or the purchase or sale of any securities;

“general advice” means giving advice to any person regardless of the purpose of investment, financial position and desire of such person;

“specific advice” means giving advice to any person with regard to the purpose of investment, financial position and desire of such person;

“related company” means

- (1) a company holding shares of twenty percent or more of all voting right shares of an investment advisory company;
- (2) a company of which an investment advisory company holds shares of twenty percent or more of all voting right share;
- (3) a company having a shareholder who holds shares of twenty percent or more of all voting right shares of such company and of an investment advisory company.

“Office” means the Office of the Securities and Exchange Commission.

² As added by the Notification of the Securities and Exchange Commission No. KorKhor. 44/2546 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 3), dated 3 December 2003.

Clause 2.³ In providing investment advisory service, the investment advisory company shall at least undertake to act as follows; provided that if it intends to arrange a mutual fund rating, it shall also comply with Clause 2/1:

(1)⁴ providing a complete work system ready to undertake the business of investment advisory service approved by the Office, which includes an internal control system in respect of giving advice, and investment supervision and control system of the investment advisory company, persons with power of management and advisors;

(2)⁵ providing a compliance supervisor of investment advisory company responsible for issuing rules for preventing conflict of interest, internal control of such investment advisory company, including the supervision of advisors to comply with the law, related Notifications and professional standard;

In case the investment advisory company intends to change the work system as approved by the Office under the first paragraph, the investment advisory company shall give a prior notice in writing to the Office. Unless the Office gives an objection in writing within fifteen days from the date of receiving the notice, the investment advisory company may change such work system.

Clause 2/1.⁶ An investment advisory company shall arrange mutual fund rating only after having been approved by the Office in accordance with the following rules:

(1) having a complete work system for operating the mutual fund rating business which can be shown that the rules used in the mutual fund rating are based on academic principle and reflects the purpose of mutual fund rating without causing misunderstanding to the essential issues of the information of such mutual fund rating;

(2) having reliable shares holding structure, organization structure, scope of business operation, directors, managers, department directors and persons with power of management, without conflict of interest which may cause the lack of independency in proceeding mutual fund rating, and is capable of operating the work impartially and fairly.

The investment advisory company shall submit an application for approval to the Office together with the document evidences as prescribed by the Office.

The Office shall finish the consideration of the application for approval within forty-five days from the date of receiving the application together with correct and complete document evidences.

Clause 3. In the capacity of an investment advisory company, the company shall maintain either collateral or liquid asset or both with adequate value as

³ As amended by the Notification of the Securities and Exchange Commission No. KorKhor. 44/2546 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 3), dated 3 December 2003.

⁴ As amended by the Notification of the Securities and Exchange Commission No. KorKhor. 44/2546 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 3), dated 3 December 2003.

⁵ As amended by the Notification of the Securities and Exchange Commission No. KorKhor. 44/2546 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 3), dated 3 December 2003.

⁶ As added by the Notification of the Securities and Exchange Commission No. KorKhor. 44/2546 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 3), dated 3 December 2003.

prescribed by the Office, and calculate and report of maintaining collateral and liquid asset adequacy in accordance with the rules and procedures prescribed by the Office.

The provisions under the first paragraph shall not apply to the investment advisory company licensed to operate other type of securities business prior to the date of submitting the application for operating investment advisory service and shall not apply to the investment advisory company which is any of the following juristic persons:

- (1) a commercial bank under the law on commercial bank;
- (2) a finance company under the law on undertaking of finance business, securities business, and credit foncier business;
- (3) a life insurance company under the law on life insurance; and
- (4) a financial institutions established under a specific law.

Clause 4.⁷ Without the limitation or restriction to the power of the Board of directors of the SEC under Section 143 of the Securities and Exchange Act, B.E. 2535 (1992) to give an order otherwise, the investment advisory company under Clause 3 which is unable to maintain adequate collateral and liquid asset prescribed by the Office shall act as follows:

(1) preparing a report of the inadequacy of collateral and liquid asset in accordance with the form prescribed by the Office and submit to the Office within the following two business days;

(2) improving the capability to maintain collateral and liquid asset adequacy for a period of not less than seven consecutive business days, within thirty days from the date on which the company is unable to maintain such adequacy, and inform the improvement to the Office within two business days from the date of the improvement.

Clause 5⁸. During the period that the investment advisory company under Clause 3 is unable to maintain collateral and liquid asset adequacy or in the process of amendment of adequacy under Clause 4(2), the investment advisory company shall not undertake the following acts unless having improve the adequacy in accordance with the prescribed rule:

- (1) providing service for a new customer;
- (2) extending the period of service to a former customer;
- (3) implementing any other act as prescribed by the Office.

Clause 6.⁹ In giving advice, the investment advisory company shall comply with the rule prescribed by the Office and shall arrange the Category A investor contact subject to the approval by the Office proceeding in accordance with the rule prescribed by the Office, and shall supervise such Category A investor contact to comply with the rule prescribed by the Office.

⁷ As amended by the Notification of the Securities and Exchange Commission No. KorNor. 42/2544 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 2), dated 16 November 2001.

⁸ As amended by the Notification of the Securities and Exchange Commission No. KorNor. 42/2544 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 2), dated 16 November 2001.

⁹ As amended by the Notification of the Securities and Exchange Commission No. KorKhor. 20/2548 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 4), dated 28 February 2005.

In the case where the investment advisory company intends to appoint an investment advisory agent, it shall make an appointment contract in writing. The appointment contract shall determine the right and duties of the investment advisory company and the investment advisory agent which is not contrary to or inconsistent with this Notification and other relevant Notifications. The investment advisory company shall supervise such investment advisory agent to comply with the contract, this Notification and relevant Notifications.

Clause 7. The investment advisory company shall not permit the investment advisory agent to appoint a sub-agent.

Clause 8.¹⁰ Repealed.

Clause 9.¹¹ Repealed.

Clause 10.¹² Repealed.

Clause 11. The investment advisory company shall prepare the following document evidences correctly, completely and up to date, and shall keep them for not less than two years from the date of preparing such document evidences:

- (1) information of a customer using for supplementing the giving advice;
- (2) an evidence showing the delivery of document acknowledging the correctness and completeness of the adaptive information of a customer;
- (3) an analysis and document evidences supporting the analysis which the investment advisory company deliver to a customer;
- (4) an advice for a customer, except in case of using a tape recorder in giving advice which shall be kept for the period of not less than two months from the day following the date of recording; however, in the case there is a complaint of the customer relating to such tape recording during such period, it shall be kept until the end of the process of such complaint;
- (5) a document showing the calculation of remuneration receiving from a customer, whether directly or indirectly;
- (6) document evidences relating to the complaint of a customer;
- (7) information on the purchase, sale or holding shares or share warrants of the investment advisory company, person with power of management or advisor in the case where the purchase, sale or holding shares or share warrants which results in such person being a shareholder, or the share warrants' holder having amount exceeding five percent of total shares sold or share warrants sold of such company; provided that the shares and share warrants of spouse and a minor child of such person shall also be included in the calculation.

¹⁰ As amended by the Notification of the Securities and Exchange Commission No. KorKhor. 20/2548 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 4), dated 28 February 2005.

¹¹ As amended by the Notification of the Securities and Exchange Commission No. KorKhor. 20/2548 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 4), dated 28 February 2005.

¹² As amended by the Notification of the Securities and Exchange Commission No. KorKhor. 20/2548 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 4), dated 28 February 2005.

In the case where the investment advisory company proceeds the mutual fund rating, the information relating to mutual fund rating and the information supporting such rating shall be kept for not less than two years from the date of dissemination.¹³

Clause 11/1.¹⁴ In rating mutual fund, the investment advisory company shall comply with the rule as follows:

(1) using the information supporting mutual fund rating gathered from the reliable and referable source;

(2) rating mutual fund and publishing the information on mutual fund rating with honesty, fairness, impartial, independence as well as due care for the sake of information recipients;

(3) indicating the purpose, criteria and explanation relating to the information on mutual fund rating, as well as the precaution of risk in using the information on mutual fund rating; in this regard, the precaution shall be indicated in the documents published for dissemination of mutual fund rating information, containing essential statement that the information on mutual fund rating should be used only for supplementing the decision to invest, the investor should study in detail before making investment decision;

(4) providing knowledgeable and expert personnel to explain the information on mutual fund rating upon enquired;

(5) in case of using a sign or other symbol in rating mutual fund , such sign or symbol must not be contrary to the law or public order;

(6) in the case where the investment advisory company intends to change the criteria of mutual fund rating and the sign or other symbol used in rating mutual fund , the company shall notify the Office in writing prior to the change thereof; unless the Office gives an objection within thirty days from the date of receiving the notice of changing the criteria or fifteen days in case of changing sign or other symbol, the company may change the criteria, sign or symbol used in rating mutual fund ;

(7) investment advisory company shall not proceed the mutual fund rating if the company, director, manager, department director or person with power of management involves in or has an interest, whether directly or indirectly, in such mutual fund or management company in a manner that may cause unfair, non-impartial and non-independent in arranging the mutual fund rating;

(8) investment advisory company shall not undertake any improper act which may cause damage to the user of information, mutual fund, asset management company, or confidence in securities business or capital market in general.

Clause 11/2.¹⁵ The investment advisory company shall submit a report or present the document relating to the mutual fund rating within the period or

¹³ As added by the Notification of the Securities and Exchange Commission No. KorKhor. 44/2546 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 3), dated 3 December 2003.

¹⁴ As added by the Notification of the Securities and Exchange Commission No. KorKhor. 44/2546 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 3), dated 3 December 2003.

¹⁵ As added by the Notification of the Securities and Exchange Commission No. KorKhor. 44/2546 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 3), dated 3 December 2003.

periodically as prescribed by the Office. In this regard, the Office may request for an explanation or clarification of such reports or documents.

Clause 11/3.¹⁶ In the case where the investment advisory company violates or fails to comply with Clause 2/1, Clause 11/1, or Clause 11/2 or does any improper act which may cause damage to the user of information, mutual fund or confidence in securities business or capital market in general, the Office shall have power to order the investment advisory company to act, amend or refrain from any act.

In the case where the investment advisory company is unable to act, amend or refrain from any act ordered by the Office under the first paragraph, the approval under Clause 2/1 shall be deemed terminated.

Clause 12.¹⁷ Repealed.

Clause 13. In the case where an investment advisory agent is employed by more than one investment advisory companies, the investment advisory agent shall, prior to giving an advice, declare to the customer that such advice is acted on behalf of the agent of which investment advisory company.

Clause 14. Prior to giving the first general advice, the investment advisory company shall notify the customer that securities investment may encounter both of the return and risk, regardless of the usage of advice from the investment advisory company, and that a general advice is given regardless of the specific characteristic of an individual, therefore, prior to adopt an advice, the customer should consider the suitability with the purpose of investment, financial position and customer's acceptable level of the risk.

Clause 15. In giving a specific advice, the investment advisory company shall also comply as follows:

(1) distributing an investment advisory service handbook which is prepared in accordance with Clause 16 to the customer prior to giving the first advice, however, there shall be rendered an evidence showing such distribution of handbook;

(2) preparing a customer's profile in writing containing the particulars prescribed by the Office and shall have the customer certify the correctness of such information; however, the profile shall be updated at least once a year or upon significant change of information, and the updated version shall be sent to the customer to certify the correctness of the updated profile; unless the customer opposes within thirty days from the date the investment advisory company delivers the updated profile to the customer, such updated profile shall be deemed correct, complete and up to date.

(3) giving suitable advice to the customer, taking into account various factors of the customer, such as the purpose of investment, knowledge and understanding of risk and investment, investment experience, financial position, financial encumbrances, desire and restriction of investment etc..

¹⁶ As added by the Notification of the Securities and Exchange Commission No. KorKhor. 44/2546 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 3), dated 3 December 2003.

¹⁷ As repealed by the Notification of the Securities and Exchange Commission No. KorKhor. 20/2548 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 4), dated 28 February 2005.

Clause 16. In making investment advisory handbook for distribution to the customer, plain language and updated information shall be used and the date of making handbook shall be specified, no advertisement shall be permitted, and at least shall contain the following details:

(1) name, address, and license number of the investment advisory company including other business operation of the company (if any), which shall be specified only in respect of the category of such other business operation;

(2) name, address, *curriculum vitae*, experience and identification number of the person who performs the duty of giving advice to the customer;

(3) statements specifying that the advice is given on behalf of the investment advisory company and the investment advisory company shall be responsible for the advice given to each customer;

(4) statements on fundamental rights of a customer as follows;

(a) the right to be informed of any behavior which may cause a conflict of interests;

(b) the right to inspect customer personal information including the advice that the customer received which are kept by the investment advisory company under Clause 11;

(c) the right to receive advice suitable for the purpose of investment, financial position and specific desire of each individual customer;

(d) the right to receive information relating to fundamental factors and the risk of the recommended securities, including investment strategy;

(5) characteristics of general and specific advice;

(6) measure on prevention of conflict of interests provided by the investment advisory company;

(7) procedure and source of information used in giving advice to the customer;

(8) procedure and basis for calculating fee, including method of payment of fee or other benefit for the investment advisory company;

(9) procedure of filing complaint, name, address, telephone number of the person or complaint unit;

(10) demonstration of the following statements in a rectangle with the letters of not smaller in size than the size of letters of general content:

“Securities investment may encounter both return and risk regardless of the advice of the investment advisory company. The advice is given by taking into account the customer’s profile given by the customer”

Clause 17.¹⁸ Repealed.

Clause 17/1.¹⁹ The provisions of Clause 2 and Clause 11(7) shall not apply to an investment advisory company licensed to operate securities business in the

¹⁸ As amended by the Notification of the Securities and Exchange Commission No. KorKhor. 20/2548 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 4), dated 28 February 2005.

¹⁹ As added by the Notification of the Securities and Exchange Commission No. KorNor. 42/2544 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 2), dated 16 November 2001.

(Translation)

-9-

category of investment advisory service prior to the effective date of this Notification, if the investment advisory company notifies in writing to the Office within fifteen days from the effective date of this Notification, that the company shall not undertake the advisory service at the moment.

If the investment advisory company under the first paragraph intends to resume the advisory service, the company shall give prior notice in writing to the Office, for not less than sixty days before resuming the advisory service, showing evidence that the company is capable to comply with the rules prescribed in this Notification.

Clause 18. This Notification shall come into force as from 1 March 2002.

Notified this 14th day of September 2001.

Somkid Jatusripitak
(Somkid Jatusripitak)
Minister of Finance
Chairman of the Securities and Exchange Commission.

Remarks :

The Notification of the Securities and Exchange Commission, No. KorNor. 23/2544 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents dated 14 September 2001, published in the Government Gazette, General issue, Vol. 118, Special Section 91Ngor, dated 19 September 2001.

The Notification of the Securities and Exchange Commission, No. KorNor. 42/2544 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 2) dated 16 November 2001, published in the Government Gazette, General issue, Special Section 115Ngor, dated 21 November 2001.

The Notification of the Securities and Exchange Commission, No. KorKhor. 44/2546 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 3) dated 3 December 2003, published in the Government Gazette, General issue, Special Section 142Ngor, dated 12 December 2003.

The Notification of the Securities and Exchange Commission No. KorKhor. 20/2548 Re: Rules, Conditions and Procedures for Investment Advisors and Appointment of Investment Advisory Agents (No. 4) dated 28 February 2005, published in the Government Gazette, General issue, Vol. 122, Special Section 29Ngor, dated 4 April 2005.